

ANN BAVENDER\*  
ANNE GOODWIN CRUMP  
VINCENT J. CURTIS, JR.  
PAUL J. FELDMAN  
FRANK R. JAZZO  
ANDREW S. KERSTING  
EUGENE M. LAWSON, JR.  
SUSAN A. MARSHALL\*  
HARRY C. MARTIN  
RAYMOND J. QUIANZON  
LEONARD R. RAISH  
JAMES P. RILEY  
ALISON J. SHAPIRO  
KATHLEEN VICTORY  
JENNIFER DINE WAGNER\*  
HOWARD M. WEISS  
ZHAO XIAOHUA\*

\* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

RETIRED MEMBERS  
RICHARD HILDRETH  
GEORGE PETRUTSAS

CONSULTANT FOR INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
SHELDON J. KRYS  
U. S. AMBASSADOR (ret.)

OF COUNSEL  
EDWARD A. CAINE\*  
MITCHELL LAZARUS  
EDWARD S. O'NEILL\*

WRITER'S DIRECT

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JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 22, 2000

(703) 812-0403

feldman@fhh-telcomlaw.com

**BY HAND**

Magalie Roman Salas, Esquire  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW, Room TWB204  
Washington, D.C. 20554

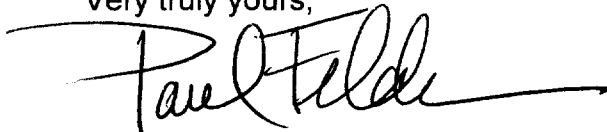
Re: **WT Docket No. 97-82**,  
**Comments of Roseville PCS, Inc.**

Dear Ms. Salas:

Transmitted herewith on behalf of Roseville PCS, Inc. are an original and four copies of its Comments in response to the Commission's June 7, 2000 *Notice of Proposed Rulemaking* in WT Docket No. 97-82.

Should there be any questions with respect to this matter, please communicate directly with the undersigned.

Very truly yours,



Paul J. Feldman  
Counsel for Roseville PCS, Inc.

PJF:jpg  
Enclosure

cc: Mr. Brian Strom  
Mr. Michael Campbell

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JUN 22 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of the Commission's Rules )  
Regarding Installment Payment )  
Financing for Personal Communications )  
Services Licenses )  
)

WT Docket No. 97-82

**COMMENTS OF ROSEVILLE PCS, INC.**

Roseville PCS, Inc. ("RPCS"), by its attorneys, hereby files these comments in response to the Commission's Further Notice of Proposed Rulemaking released June 7, 2000 in the above-captioned proceeding (hereinafter, "*Further Notice*"). As set forth below, RPCS proposes that the Commission provide an opportunity for companies such as RPCS, who were eligible to participate in the original C and F Block auctions but have subsequently grown over the revenue limitations for "entrepreneurs", to be eligible to bid on F Block spectrum in Auction 35. This could be accomplished in one of the three following ways:

-revise the revenue limit in Section 24.709 of the Commission's rules to account for inflation subsequent to the adoption of the \$125 million figure in June of 1994. As shown below, the figure of \$145 million would be a rational and fair revision, based on the Bureau of Labor Statistics' Consumer Price Index-Urban ("CPI-U") for the years 1994-2000; or

-expand the spectrum on which "grandfathered" participants from the original C and F Block auctions (Auctions 5 and 11) may bid to include both C and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11; or

-if the Commission decides not to revise the revenue limits for bidders, or not to expand grandfathering to F Block spectrum, then it should open up the F Block

to all bidders. However, in such a case, RPCS believes that the use of bidding credits for “entrepreneurs” in this block is unnecessary for such entities to have a fair chance at obtaining F Block spectrum, and that use of bidding credits is contrary to the objectives set forth in Section 309(j) of the Communications Act.

Adoption of one of the above proposals would serve the public interest by furthering the goals of Section 309(j) of the Communications Act, and would remedy the unfairness to original bidders who would have obtained certain F Block licenses, but for the fact that the “winner” of those licenses bid irresponsibly, and then declared bankruptcy.

## **I. Introduction**

RPCS realizes that numerous parties have made proposals on eligibility in filings that led to the issuance of the *Further Notice*. Yet, RPCS believes that the Commission could benefit from a viewpoint largely not heard in the current debate. RPCS is an entity small enough to have participated in the original C Block and F Block auctions, yet which has subsequently and recently grown above the current \$125 million annual revenue limit for C Block/F Block bidding eligibility, as set forth in Section 24.709 of the Commission’s rules.

RPCS holds an approximate 97 percent interest in West Coast PCS, LLC (“West Coast”). West Coast obtained E-Block PCS licenses in Auction No. 11 for the Sacramento, Stockton, Modesto and Yuba City BTAs. All of these licenses have been paid in full. PCS service is currently being provided in three of those BTAs, with construction and commencement of service in the remaining BTA expected in the near future.

West Coast/RPCS qualified as a designated entity, and bid for C Block spectrum in Auction No. 5 and F Block spectrum in Auction No. 11. When prices for the licenses

on which it was bidding became uneconomic, West Coast dropped out of the bidding on those licenses. The winning bidders on those licenses subsequently declared bankruptcy, and the spectrum thus remains unused.

While RPCS and its parent company RCC are not among the financial giants of the wireless telecommunications industry, they have been successful companies. Because of that success, RCC's revenues have recently grown over the \$125 million limit set forth in Section 24.709 of the Commission's rules, and RPCS will not be allowed to bid on F Block spectrum in Auction 35. In order to promote the goals of Section 309(j) of the Communications Act, and fairness to responsible bidders in the original C and F Block auctions, RPCS urges the Commission to modify its rules in one or more of the ways set forth herein, so that RPCS and similarly situated companies may compete for F Block spectrum.

## **II. Proposals for Bidder Eligibility**

RPCS suggests three ways to revise the rules, in a manner consistent with the goals of Section 309(j), so that companies such as RPCS may bid for F Block spectrum.

- A. Revise the Revenue Limit in Section 24.709 of the Commission's Rules to Account for Inflation  
Subsequent to the Adoption of the \$125 Million Figure.

The \$125 million revenue figure was adopted as the definition of "entrepreneur" for the purposes of broadband PCS auctions in the *Fifth Report and Order in PP Docket 93-253 (Competitive Bidding)*, 9 FCC Rcd 5532, released June 29, 1994. By the time Auction 35 occurs, at least six years will have passed since that time. As the Commission well knows, inflation has occurred during that time, undercutting the

propriety of that figure. A review of the growth of the Bureau of Labor Statistics' Urban Consumer Price Index ("CPI-U") shows that \$125 million in July of 1994 is equivalent to approximately \$145 million in April of 2000 (the latest month for which figures are available). This is calculated<sup>1</sup> as follows:

- a. July 1994 CPI-U: 148.0
- b. April 2000 CPI-U: 171.2
- c. Inflation factor: 1.1567  
(Line b/line a)
- d. Current Revenue Limit: \$125 Million
- e. Adjusted Revenue Limit: \$144.594 Million  
(line c \* line d)

Rounded to \$145 million, this figure provides a rational adjustment of the maximum annual revenue figure for companies eligible to bid on C and F Block licenses, if the Commission is going to continue to limit eligibility based on financial resources.<sup>2</sup> Such

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<sup>1</sup> CPI-U information is available at the BLS Website at <http://stats.bls.gov/cpihome.htm>. At that site, click on the line marked "Table Containing History of CPI-U U.S."

<sup>2</sup> RPCS recognizes that the Commission has used a different factor for inflation adjustment for the purposes of classifying carriers for various accounting and reporting purposes. See, e.g., *Public Notice* DA 00-971, released May 3, 2000. However, that factor, the gross domestic product chain-type index (GDPPI), is not as appropriate in this proceeding as an index based on consumer prices. Changes in wholesale cost and industrial expense indices (e.g., the GDPPI) are not as accurate as indices based on consumer prices in reflecting variations in the revenues of potential bidders, since the revenue of bidders is derived primarily from retail sales, which are reflected in consumer price indexes. Furthermore, use of the GDPPI would create an inflation factor of only 9.94 percent, raising the revenue threshold to only \$137 million, a level which would not make RPCS and similarly situated companies eligible for the auction.

an adjustment is also consistent with the recognition in the Commission's rules that "entrepreneurs" will grow, and that their revenues will also grow. See Section 24.709(a)(3) (increases in gross revenues due to business development or expanded services does not negate an entity's on-going qualification as an entrepreneur). This sort of internal growth is precisely the reason why RPCS/RCC and similarly situated companies have subsequently gone over the \$125 million revenue level.

**B. Expand the Spectrum on Which "Grandfathered" Participants May Bid, to Include Both C Block and F Block Licenses.**

If the Commission decides not to adjust the revenue limit for entrepreneurs to account for inflation, then it should expand the spectrum on which "grandfathered" participants in Auctions 5 and 11 may bid, to include both C Block and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11.

Section 24.709(a)(9)(i) of the Commission's rules provides that entities that participated in the original C/F Block auctions (Nos. 5 and 11) may participate, regardless of their current revenue/asset figures, in auctions for C Block spectrum commencing in a two year period from, in effect, the most recent C Block auction (No. 22, which started on March 23, 1999). The rule does not explicitly address similar grandfathering for original participants in Auctions 5 and 11 who now wish to bid on E Block spectrum.<sup>3</sup> In explaining this distinction, the Commission notes in paragraph 36 of the *Further Notice* that grandfathering was part of a limited relief package offered

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<sup>3</sup> A *Public Notice* on Auction No. 22 procedures, DA 99-302, released February 8, 1999, does state that entities may use grandfathering to qualify to bid on C Block licenses, but not on F Block licenses.

only to C Block auction participants, due to the unique financial difficulties that plagued C Block winners. RPCS believes, however, that this is not an accurate view of the relationship between the grandfathering provision and other relief given to C Block participants: in the *Second Report and Order* in this proceeding, the distinction between the difficulties of C Block and F Block participants is only made in the context of the disaggregation, amnesty and prepayment remedies made available to C Block participants, not in the context of grandfathering of eligibility. 12 FCC Rcd 16436 (1997) at para. 20.

In any case, policy reasons support extending the grandfathering provisions to bidders on F Block spectrum. First, this would be one way of remedying the unfairness to original bidders who would have obtained certain F Block licenses, but for the fact that the “winner” of those licenses bid irresponsibly, and then declared bankruptcy. Similarly, expansion of the grandfathering to bidding on F Block licenses would remedy the fact that certain entrepreneurs have subsequently grown over the revenue limit in part due to the extensive delays in reauction of F Block licenses caused by bankruptcy litigation initiated by the previous “winners” of the licenses.

C. Open Up the F Block for All Bidders.

If the Commission decides not to revise the revenue limits for bidders, or not to expand grandfathering to F Block spectrum, then it should open up the F Block auction to all bidders. RPCS concurs with the numerous petitioners and other recent participants in this proceeding who have demonstrated that opening up the F Block to all bidders would further the Section 309(j)(3) goals of rapid deployment of advanced technologies, recovery to the public of value for the spectrum, and efficient use of the

spectrum. Indeed, even if companies like RPCS no longer qualify as “entrepreneurs”, allowing them to bid on F and C Block spectrum furthers the Section 309(j)(3)(B) goal of promoting economic opportunity and competition.

RPCS asserts that if the F Block is opened up for all bidders, “bidding credits” should not be made available to any bidders. There does not appear to be a need to create a non-level playing field in the F Block. Smaller companies can compete, and as evidenced by the recent access to the capital markets, can afford to pay for these licenses. Indeed, RPCS is an example, in Auction No. 11, of a company that qualified for bidding credits in the F Block as a “designated entity”, but succeeded in obtaining spectrum in the E block, without bidding credits.

Similarly, RPCS does not believe that there is any need to limit open bidding on the F Block to certain “tiers” of markets. *See, Further Notice* at paragraph 31. While such an approach may be understandable in connection with open bidding in the C Block, it is not appropriate here. In the C Block, the use of tiers is proposed in order to differentiate between those markets where more or less of the split-up 30 MHz of C Block spectrum is made available for open bidding. In the case of the F Block, there is no proposal to split the 10 MHz available, and accordingly, there is no need to use tiers.

### **III. Conclusion**

Allowing companies such as RPCS to bid on F Block spectrum would further the goals of Section 309(j)(3) of the Communications Act, and help remedy companies who were unfairly denied such spectrum as a result of other bidders’ irresponsible actions. This goal could be achieved by revising the \$125 million revenue limit up to \$145 million to account for inflation, or by expanding the “grandfathering” of participants in Auctions



5 and 11 who have grown over the \$125 revenue limit, from eligibility merely to bid on C Block licenses, to eligibility to bid on C Block and F Block licenses. Application of the grandfathering to F Block licenses could be limited to entities that previously bid on F Block spectrum in Auction 11. However, if the Commission chooses not to enact one of these two solutions, then it should open up the F Block to all bidders.

Respectfully submitted,

ROSEVILLE PCS, INC.

A handwritten signature in black ink, appearing to read "Paul Feldman", with a long horizontal line extending from the end of the signature.

Paul J. Feldman  
Its Attorney

Fletcher, Heald & Hildreth, PLC  
1300 N. 17th Street, 11th Floor  
Arlington, VA 22209  
(703) 812-0400

June 22, 2000